



DEPARTMENT OF THE AIR FORCE
WASHINGTON, DC

JUN 30 1998

Office of the Assistant Secretary

AFBCMR 97-03748

MEMORANDUM OF CONSIDERATION OF APPLICATION BEFORE THE AFBCMR

SUBJECT: [REDACTED]

Having carefully reviewed this application, we agree with the recommendation of the Air Force office of primary responsibility and adopt the rationale expressed as the basis for our decision that the applicant has been the victim of either an error or an injustice. Therefore, under the authority delegated in AFI 36-2603, the applicant's records will be corrected as set forth in the accompanying Memorandum for the Chief of Staff signed by the Executive Director of the Board or his designee.


Panel Chair

Attachment:
Ltr, HQ AFPC/DPPTR, dtd Apr 14, 1998,
w/Atch



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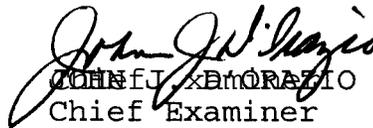
Office of the Assistant Secretary

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MEMORANDUM FOR THE CHIEF OF STAFF

Under the authority of Section 1552, Title 10, United States Code and Air Force Instruction 36-2603, and having assured compliance with the provisions of the above regulation, the decision of the Air Force Board for Correction of Military Records is announced, and it is directed that:

The pertinent military records of the Department of the Air Force relating to [REDACTED] be corrected to show that on 17 November 1992, he changed his Survivor Benefit Plan (SBP) election from spouse coverage to former spouse coverage based on reduced retired pay, naming [REDACTED] as the former spouse beneficiary.


JOHN J. HAYES
Chief Examiner

Air Force Board for Correction
of Military Records



DEPARTMENT OF THE AIR FORCE
HEADQUARTERS AIR FORCE PERSONNEL CENTER
RANDOLPH AIR FORCE BASE TEXAS

14 APR 1993

MEMORANDUM FOR AFBCMR

FROM: HQ AFPC/DPPTTR
550 C Street West Ste 11
Randolph AFB TX 78150-4713

SUBJECT: Application for Correction of Military Records

Requested Correction: The applicant is requesting corrective action to show that he filed a timely election for former spouse coverage under the Survivor Benefit Plan (SBP) to comply with his divorce decree.

Basis for Request: The applicant claims he was not familiar with the procedure he should have taken to change his election.

Background: A spouse loses eligibility as a spouse beneficiary following divorce. However, the law provides two mechanisms for changing spouse coverage to former spouse coverage. **Both** must be exercised within the first year following divorce: the retiree may file an election change, or the former spouse may request the retiree be deemed to have made such a change on his or her behalf. In the latter case, the former spouse must provide legal documentation that the member agreed, or that the court ordered the member, to establish former spouse coverage. If neither the member nor the former spouse requests the election change during the one-year eligibility period, former spouse coverage may not be established thereafter. Even though a member fails to notify the Defense Finance and Accounting Service (DFAS) of the divorce and continues to pay SBP premiums afterwards, the former spouse is not eligible for annuity payments upon the member's death.

Facts: The member elected spouse only SBP coverage, reduced annuity, prior to his 1 Mar 73 retirement. The parties divorced on 16 Nov 92 and the divorce decree required SBP coverage be continued; however, neither party submitted a valid election to change the coverage from spouse to former spouse within the required time limit. The member remarried 24 Nov 92 but did not request the SBP be established on his new wife's behalf. SBP premiums continued to be deducted from his retired pay until May 97 when the DFAS - Cleveland Center (DFAS-CL) retroactively suspended coverage and issued the applicant a refund of premiums erroneously deducted following the divorce.

Discussion: Even though the member did not make a valid election change, there is no evidence he requested coverage for his former spouse be terminated or established for his new spouse following his remarriage, all indicative of his intent to maintain his former spouse as the eligible SBP beneficiary. The applicant is aware all refunded and retroactive SBP premiums will have to be recovered. To deny this request would be to deny his former spouse an asset awarded to her by the court.

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Recommendation: Although there is no evidence of Air Force error, to preclude a possible injustice, we recommend the member's record be corrected to reflect that on 17 Nov 92 he elected to change SBP spouse coverage to former spouse coverage based on the previous reduced level of coverage, naming [REDACTED] the eligible former spouse beneficiary. Approval should be contingent upon recoupment of all applicable premiums.



PAT PEEK, DAFC
Chief, Retiree Services Branch
Directorate of Pers Program Mgmt